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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			COLBERT, ELLA	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/822,484	Applicant(s) ASHER ET AL.	
	Examiner Ella Colbert	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-47 are pending. Claims 1-3, 6-9, 12-14, 25-34, 36, and 41-47 have been amended in this communication filed 08/08/05 entered as Response After Non-Final Action.
2. The 35 U.S.C. 101 rejection of claims 1-47 has been overcome by Applicants' amendment to the claims and is hereby withdrawn.
3. The 35 USC 112 second paragraph rejection of claim 1 has been overcome by Applicants' amendment to claim 1 and is hereby withdrawn. However Applicants' lack of antecedent basis still remains as set forth here below.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph.

Claim 1 recites the limitation "after-market trading" and "in at least one activity". These limitations are not found in the other limitations of claim 1. There is insufficient antecedent basis for these limitations in the claim.

Specification

6. The Specification is objected to because of the following informalities: Page 3, line 3 recites "... an activity may b transferred". This line would be better read "... an activity may be transferred"; Page 5, lines 31 and 32 recite "... distributed by a suitable method. For example, ..., and auction, a". These lines would be better read "... distributed by a suitable method. For example, ..., an auction, a". These are only a few

of the misspelled words and grammatical errors. Applicants' are respectfully requested to review the Specification for other misspelled words and grammatical errors.

A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by (US 6,067,532) Gebb.

Claim 1. Gebb teaches, A computer-implemented method performed using a computer system for conducting an exchange of an activity entry between a buyer and a seller the computer system comprising one or more processing units and one or more

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memory units, the method comprising: determining a first set of entries in at least one activity (col. 2, lines 29-50 –(one activity –the consignment of tickets); using the computer systems distributing (a) the first set of entries in at least one activity (col. 2, lines 51-62); and using the computer system, conducting after-market trading, of at least one of the entries, between at least one buyer and at least one seller (col. 3, lines 20-42).

Claim 2. Gebb teaches, The method of claim 1, wherein the step of conducting after-market trading comprises: receiving, from a first user, at least one buy request associated with at least one entry of the first set of entries (col. 5, lines 15-65); receiving, from a second user, at least one sell request associated with the at least one entry of the first set of entries (col. 6, lines 3-63); matching the at least one buy request with the at least one sell request (col. 8, line 3-29); and transferring the at least one entry of the first set of entries from the second user to the first user (col. 8, lines 30-67).

Claim 3. The method of claim 1, wherein the step of conducting after-market trading comprises: receiving, from a first user, a buy order associated with at least one entry of the first set of entries (col. 6, line 64-col. 7, line 13); receiving, from a second user, a short sale order associated with the at least one entry of the first set of entries (col. 6, lines 40-63); matching the buy order with the at least one short sale order to create a short sale (col. 6, line 64-col. 7, line 13 and lines 42-52); settling, at a predetermined time, the short sale (col. 8, line 3-29).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,067,532) Gebb in view of (US 2002/0082969 A1) O'Keeffe et al, hereafter O'Keeffe.

Claim 4. Gebb failed to teach, The method of claim 1, wherein distributing comprises conducting a lottery for the first set of entries. O'Keeffe teaches, wherein distributing comprises conducting a lottery for the first set of entries (page 3, col. 2, paragraph [0034]-[0035]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distributing comprise conducting a lottery for the first set of entries and to modify in Gebb because such a modification would allow Gebb to participate in a lottery distribution where prospective participants may be asked to register over a web site by telephone and to pay the ticket lottery subscription fee in advance.

Claim 5. Gebb failed to teach, The method of claim 1, wherein distributing comprises conducting an auction for the first set of entries. O'Keeffe teaches, distributing comprises conducting an auction for the first set of entries (page 3, col. 2, paragraph [0032]-[0033]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distributing comprise conducting an auction for the first set of entries and to modify in Gebb because such a modification

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would allow Gebb to have the first portion of tickets placed in an auction pool where the initial size of the auction pool is determined, at least in part, by the ticket price, the event venue, the size of the applicable market, and the anticipated demand.

Claim 6. Gebb teaches, The method of claim 1, further comprising. using the computer system, the step of distributing a second set of entries for the first activity and using the computer systems the step of conducting after-market trading of the second set of entries (col. 6, lines 40-63 –second set of redistribution entries).

Claim 7. Gebb teaches, The method of claim 6, wherein the after- market trading of the first set of entries is discrete from the after-market trading of the second set of entries (col. 6, line 64-col. 7, line 13).

Claim 8. Gebb teaches, The method of claim 6, wherein the after-market trading of the first set of entries is commingled with the after-market trading of the second set of entries (col. 7, lines 20-41).

Claim 9. Gebb teaches, The method of claim 1, further comprising: using the computer system. the step of distributing a second set of entries for a second activity and using the computer system. the step of conducting after-market trading of the second set of entries (col. 8, lines 12-43).

Claim 10. Gebb teaches, The method of claim 9, wherein the first activity is the same type of activity as the second activity (col. 8, lines 12-43).

Claim 11. The method of claim 9, wherein the first activity (col. 5, lines 25-65) is a different type of activity from the second activity (col. 8, lines 12-43).

Claim 12. this dependent claim is rejected for the similar rationale as given above for claim 7.

Claim 13. this dependent claim is rejected for the similar rationale as given above for claim 8.

Claim 14. Gebb failed to teach, The method of claim 1, wherein the after-market trading of the first set of entries comprises conducting an auction of at least one entry of the first set of entries. O'Keeffe teaches, wherein the after-market trading of the first set of entries comprises conducting an auction of at least one entry of the first set of entries (page 9, col. 1, paragraph [0101]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first set of entries comprise conducting an auction of at least one entry of the first set of entries and to modify in Gebb because such a modification would allow Gebb to have a user to elect to view an auction site where the key elements of the auction are displayed with the current price for the entries is being offered and the time expiration of the current offer.

Claim 15. Gebb failed to teach, The method of claim 14, wherein conducting the auction comprises receiving from a first user a request to auction at least one entry held by the first user, and receiving from a second user a first bid request for the at least one entry. O'Keeffe teaches, conducting the auction comprises receiving from a first user a request to auction at least one entry held by the first user, and receiving from a second user a first bid request for the at least one entry (page 3, col. 2, [0032]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to conduct and auction comprising receiving from a first user a request to auction at

least one entry held by the first user, and receiving from a second user a first bid request for the at least one entry and to modify in Gebb because such a modification would allow Gebb to have a system for restoring the proper value and selling price auction with a secondary distribution occurring after the auction distribution is completed.

Claim 16. Gebb failed to teach, The method of claim 15, further comprising receiving from a third user a second bid request higher than the first bid request and transferring the at least one entry to the third user. O'Keeffe teaches, receiving from a third user a second bid request higher than the first bid request and transferring the at least one entry to the third user (page 7, col. 1, paragraph [0072]-col. 2, line 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to receive from a third user a second bid request higher than the first bid request and transferring the at least one entry to the third user and to modify in Gebb because such a modification would allow Gebb to award the entry to the highest bidder in the auction that out bid the first bid.

Claim 17. Gebb teaches, The method of claim 1, wherein the activity is a sports activity (col. 1, lines 31-38).

Claim 18. Gebb teaches, The method of claim 1, wherein the activity is an entertainment activity (col. 1, lines 12-17).

Claim 19. Gebb does not expressly teach, The method of claim 1, wherein the activity is a competition. However in col. 2, lines 36-50 Gebb does disclose an event in an arena and determining a price for a ticket which could be a competition.

Claim 20. Gebb teaches, The method of claim 1, wherein the activity is a financial market activity (col. 2, lines 11-27).

Claim 21. Gebb does not expressly teach, The method of claim 1, wherein the activity is a tournament. However, Gebb in col. 3, lines 20-42 does disclose sporting events which may include a tournament.

Claim 22. Gebb teaches, The method of claim 1, wherein the activity is a single game (col. 3, lines 20-34).

Claim 23. Gebb teaches, The method of claim 1, wherein the activity is a basketball tournament (col. 3, lines 34-42).

Claim 24. Gebb and O'Keeffe failed to teach, The method of claim 1, wherein the activity is a political election. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the activity is a political election and to modify in Gebb because such a modification would allow Gebb's system to support several different types of activities. It is well known by POSITA that a political election is considered an activity and something that can have tickets auctioned or a lottery for tickets to attend the political dinners, fundraisers, and the other political events surrounding the election.

Claim 25. Gebb teaches, The method of claim 1, further comprising: using the computer system. the step of accepting payment for the entry from the first user (col. 5, lines 25-45).

Claim 26. Gebb teaches, The method of claim 1, further comprising using the computer system. the step of accepting confirmation of payment for the entry by the first user (col. 5, lines 46-65).

Claim 27. Gebb teaches, The method of claim 1, further comprising using the computer systems the step of distributing all or a portion of the entries in a single bundle to one or more users (col. 6, line 64-col. 7, line 12).

Claim 28. Gebb teaches, The method of claim 27, wherein the single bundle is distributed prior to conducting the after-market trading of the first set of entries (col. 8, lines 3-11).

Claim 29. Gebb teaches, The method of claim 27, wherein the single bundle is distributed after commencement of the after-market trading of the first set of entries (col. 8, lines 12-43).

Claim 30. Gebb teaches, The method of claim 1, wherein conducting the after-market trading comprises receiving a short sell order from a first user and a buy order from a second user (col. 7, line 53-col. 8, line 29).

Claim 31. Gebb teaches, The method of claim 1, wherein the after- market trading comprises conducting at least one transfer of at least one entry (col. 8, lines 30-43).

Claim 32. Gebb teaches, The method of claim 1, wherein the after- market trading comprises conducting at least one sale of at least one entry (col. 8, lines 44-62).

Claim 33. Gebb teaches, The method of claim 1, wherein the after-market trading comprises conducting at least one short sale (col. 7, line 53-col. 8, line 29 –interpreted as short sale).

Claim 34. Gebb failed to teach, The method of claim 1, wherein the after- market trading comprises at least one auction. O’Keeffe teaches, the after- market trading comprises at least one auction (page 3, col. 2, paragraph [0032]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the after-market trading comprise at least one auction and to modify in Gebb because such a modification would allow Gebb to have the capability for a consumer to purchase a ticket at market value via an auction.

Claim 35. The method of claim 34, Gebb failed to teach, wherein the auction comprises an auction in which a payout of a certain minimum amount at a certain time is guaranteed to be made to the holder of a winning entry. O’Keeffe teaches, wherein the auction comprises an auction in which a payout of a certain minimum amount at a certain time is guaranteed to be made to the holder of a winning entry (page 4, col. 1, paragraph [0040]-[0041]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the auction comprises an auction in which a payout of a certain minimum amount at a certain time is guaranteed to be made to the holder of a winning entry and to modify in Gebb because such a modification would allow Gebb to have a payout made to the highest bidder prior to the close of the auction.

Claim 36. this dependent claim is rejected for the similar rationale as given above for claim 35.

Claim 37. Gebb failed to teach, The method of claim 36, wherein the payout is money. O'keeffe teaches, wherein the payout is money (page 7, col. 2, paragraph [0078]-[0079]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the payout to be money and to modify in Gebb because such a modification would allow Gebb to have a range of payout possibilities for the tickets.

Claim 38. Gebb teaches, The method of claim 36, wherein the payout is a non-cash prize (col. 7, line 53-col. 8, line 11).

Claim 39. Gebb teaches, The method of claim 36, wherein the payout comprises at least a portion of fees paid for the first set of entries during the distributing step (col. 7, line 53- col. 8, line 43).

Claim 40. Gebb failed to teach, The method of claim 36, wherein the payout is based on an amount of revenues generated by the distributing step. O'Keeffe teaches, wherein the payout is based on an amount of revenues generated by the distributing step (page 7, col. 2, paragraph [0079]-[0080]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the payout based on an amount of revenues generated by the distributing step and to modify in Gebb because such a modification would allow Gebb to have the capability to increase the base revenue but reduce the estimated revenue.

Claim 41. Gebb teaches, The method of claim 1, further comprising: using the

computer system the step of receiving a commission or fee for the transfer of at least one entry (col. 7, line 53-col. 8, line 2).

Claim 42. Gebb teaches, The method of claim 1, wherein the after-market trading begins as soon as at least one entry is distributed (col. 8, lines 12-22).

Claim 43. Gebb teaches, The method of claim 1, wherein the after-market trading begins after all of the entries are distributed (col. 8, lines 22-43).

Claim 44. Gebb teaches, The method of claim 1, wherein the after-market trading begins after a predetermined number of entries are distributed (col. 8, lines 44-67).

Claim 45. Gebb teaches, The method of claim 1, wherein the after-market trading is closed at a predetermined time (col. 8, lines 16-29).

Claim 46. Gebb teaches, The method of claim 1, wherein the after-market trading is closed before the start of the activity (col. 7, lines 14-65).

Claim 47. Gebb teaches, The method of claim 1, wherein the (after market) after-market trading is closed at the end of the activity (col. 9, lines 1-24).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wall et al (US 2002/0156715) disclosed auctioning, canceling and reissuing a ticket online.

Brett et al (US 6,023,685) disclosed an event auctioning system.

Inquiries

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Tuesday-Thursday, 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



E. Colbert
Primary Examiner
October 26, 2005